IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5554 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PANKAJKUMAR M SHAH

Versus

STATE OF GUJARAT

Appearance:

MR NM KAPADIA for Petitioners

Ms.Nandini Joshi, ASSTT GOVERNMENT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 11/08/2000

ORAL JUDGEMENT :

The present petition is filed against an order dated 17.3.1989 passed by respondent no.2, whereby entry no.536 dated 15.10.1984 and entry no.537 of the same date of village Bhimpore, taluka Choryasi, district Surat were cancelled under sec.211 of the Bombay Land Revenue Code taking into consideration the fact that the transaction on the basis of which said entries were made was in violation of the provisions of sec.63 of the Bombay Tenancy and Agricultural Lands Act.

2. Learned advocate Mr.Kapadia appearing for the petitioner submitted that petitioner no.1 entered into a transaction by purchase of part of the land bearing revenue survey no.76 of village Bhimpore by registered sale deed dated 25th May 1984. It is the case of the petitioners that the said entry no.536 came to be made on 15.10.1984. Thereafter, said entry came to be certified on 25.11.1984. So far as the second entry is concerned, petitioner no.2 also entered into transaction of purchasing a part of revenue survey no.76 of village Bhimpore and survey no.240 of village Gaviyar. It is given out that regarding the transaction of petitioner no.2, pertaining to revenue survey no.76 of village Bhimpore, mutation entry no.537 came to be made on 15.10.1984, which came to be certified on 20.11.1984. So far as the land bearing surveyno.240 of village Gaviyar is concerned, mutation entry bearing no.1379 was made on 18.1.1985.

3. Mr.Kapadia, learned advocate submitted that the petitioner had not produced the copies of the two notices dated 13.12.1988, but has subsequently produced by an amendment. The written submissions filed by the petitioners in reply to those notices are also filed along with that. Mr.Kapadia submitted that the provisions of sec.121 of the Gujarat Town Planning and Urban Development Act, 1976, were in force when the said transaction was entered into in the year 1984 and by virtue of the said provisions of sec.121 of the said Act, the provisions of the Bombay Tenancy and Agricultural Lands Act were not applicable to the area in question. Sec.121 of the Gujarat Town Planning and Urban Development Act, 1976 reads as under :

> "121. The provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 and the Bombay tenancy Vidarbha (Region and Kutch Area) Act, 1958, as in force for the time being, shall not apply to any area included in a town planning scheme under this Act."
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> [Deleted by the Gujarat Act 4 of 1986].

4. It is further submitted that the preliminary Town Planning Scheme had come into existence in May 1984 and that said Town Planning Scheme was finalised on 21.3.1986. Therefore, by virtue of sec.121 of the Town Planning and Urban Development Act, 1976, the said transaction had exemption from the provisions of the Bombay Tenancy Act. Mr.Kapadia has fairly conceded that

this point was not urged before the authorities. In my opinion this point involves investigation and appreciation of factual aspect of the matter like; whether the area in question was included in the said Town Planning Scheme or not. Mr. Kapadia, learned advocate invited attention of the Court to certain letters issued by Surat Urban Development Authority dated 21.3.1989 whereby it is mentioned that the land bearing survey no.240 of village Gaviyar, taluka Choryasi was reserved for the purpose of : transport - civil aviation -- aerodrome complex expansion and that the aid land was also within the purview of the height restrictions in that regard. Similarly, the zoning certificate is produced about revenue survey no.76 of village Bhimpore. This point cannot be permitted to be agitated inasmuch as the said point involves investigation on the factual aspect and in view of the fact that the said point was not agitated before the authority. The order of the authority is being examined under Article 227 of the Constitution of India, where this point cannot be permitted to be agitated, more particularly when it is revealed from the order of the authority concerned that the petitioners were represented through advocate before the authority. Not only that the leaned advocate appearing before the authority had submitted his written submissions also. There is no justification for permitting the petitioners to raise this point now at this stage, which requires a factual investigation.

5. Learned advocate for the petitioners submitted that the advocate appearing for the petitioners before the authorities had submitted his written submissions on 24.1.1989 and that thereafter the authority had taken into consideration the statement of the Talati of village Icchapur on 30.1.1989 and thereafter the petitioners or the petitioners' advocate were not given any opportunity to explain their case. This submission is devoid of any merit and is required to be rejected. Further the petitioners through their advocate produced certain documents/ extracts from village record of Icchapore so as to claim status of agriculturists in respect of the land belonging to village Icchapore. The authority has recorded in terms that when the documents produced by the petitioners were checked with the village record of Icchapore, the same were found to be not consistent with the official record. The authorities have recorded that the petitioners' advocate has produced false evidence and has tried to mislead, of which a serious note is taken and the written submissions made by the learned advocate are rejected. In fact this is a matter wherein a serious view is required to be taken and the authority ought to

have taken a serious view of the matter. However, it seems that the authority rest contented with passing of the order, which is Annexure 'H' to this petition.

6. Mr.Kapadia, learned advocate for the petitioners then submitted that the authorities have issued notice on 13.12.1988 pursuant to the transaction dated 25.5.1984 and thus, the notice is vitiated on account of delay. Mr.Kapadia submitted that the authorities ought to have exercised power within a reasonable time. In this regard Mr.Kapadia relied upon a judgement of this Court in the matter of Patel Chhotabhai Madhavbhai and another v. State of Gujarat & another, reported in 1995(1) GLR 407. Mr.Kapadia submitted that the reasonable time could be a period of "few months" as observed by this Court in the said judgement. He vehemently submitted that in the present case the authorities have chosen to exercise power after lapse of four years, which cannot be said to be "a reasonable time" by any stretch of imagination. Therefore, on this short ground the action is required to be quashed by this Court. Mr.Kapadia relied upon another judgement of this Court in the matter of Janardan D. Patel v. State of Gujarat, reported in 1997 (38) (1) GLR 50, to submit that when the authorities are exercising power under the provisions of one particular Act, the same cannot be exercised for the purpose of violation of the provisions of some other Act. The submission of Mr.Kapadia was that the authorities had given notice under sec.211 of the Bombay Land Revenue Code and it is also alleged that the petitioners had committed breach of sec.23 of the Bombay Tenancy Act. Mr.Kapadia submitted that even on that ground, the action of the authorities is required to be quashed and set aside by this Court.

7. The learned Asstt. Govt. Pleader Ms.Nandini Joshi appearing for the respondents submitted that so far as the question of delay in exercising power is concerned, there is no delay as is held by the Apex Court in the mater of State of Orissa and others v. Brundaban Sharma and another, reported in 1995 Supp. (3) SCC 249. She submitted that the Apex Court has held that when validity of a non est order is in question the same can be agitated in any proceeding at any stage. She further submitted that in the aforesaid judgement, the Apex Court has also considered the judgement of this Court in the matter of the State of Gujarat v. Patil Raghav Natha and others, reported in (1969) 2 SCC 187, in which the aspect of delay was considered by this Court and the concept of exercising powers within a reasonable time was originated.

8. Ms.Nandini Joshi, learned Assistant Govt. Pleader submitted that exercising extraordinary jurisdiction under Article 226 of the Constitution of India in such matters will amount to perpetuating an illegality which is committed by the parties. Ms.Joshi also submitted that this point is concluded in one Special Civil Application by this Court (Coram : S.K. Keshote, J.) and also in another Special Civil Application by this Court (Cora : R.K. Abichandani, J.). However, she is not able to point out citations of those judgements at this moment. Looking to the submissions made by learned Asstt. Govt. Pleader Ms.Nandini Joshi, it becomes clear that exercise of extraordinary jurisdiction under Article 226 of the Constitution of India is neither in the interest of justice nor in the interest of society. In that view of the matter, the petition is required to be dismissed.

9. Mr.Kapadia, learned advocate for the petitioners submitted that when the point regarding sec.121 of the Town Planning Act was not agitated before the authorities, the matter may be remanded to the authorities so as to give an opportunity to the petitioners to take that point. In the facts and circumstances which are narrated hereinabove. I do not think it proper to accede to this request of Mr.Kapadia. Hence the said request is rejected.

10. In the result the petition is dismissed. Rule is discharged with no order as to cost. Ad interim relief granted earlier stands vacated.

11th August 2000 (Ravi R. Tripathi, J.)

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